UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	.	CRIMINAL NO. 15-10300-DPW
	.	
V.	.	BOSTON, MASSACHUSETTS
	.	MARCH 22, 2016
JOHN FIDLER ET AL	.	
Defendants	.	

. . . . . .

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE MARIANNE B. BOWLER
UNITED STATES MAGISTRATE JUDGE

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(Court called into session)

(3:34:38 PM)

THE CLERK: --District Court for the District of Massachusetts is now in session. The Honorable Marianne B. Bowler presiding. Today is Tuesday, March 22, 2016 in the case of U.S. v. Fidler et al, Criminal Action 15-10300 will now be heard.

Would counsel please identify themselves for the record?

MS. KAPLAN: Good afternoon, Your Honor, Laura Kaplan on behalf of the United States Government.

THE COURT: Thank you.

MS. BARCLAY: And Christina Barclay on behalf of the United States.

THE COURT: Thank you very much.

MR. GOLDSTEIN: Good afternoon, Your Honor, Robert Goldstein on behalf of Mr. Harrington who is present in the courtroom.

THE COURT: All right.

MR. CRUZ: Good afternoon, Your Honor, Oscar Cruz for Daniel Redmond who is here as well.

THE COURT: Thank you.

MR. O'CONNELL: Tim O'Connell representing John Fidler together with James Brothers representing John Fidler. Mr. Fidler is present in the courtroom as well.

THE COURT: Thank you.

MR. BARRON: Kevin Barron for Michael Ross who's seated here.

THE COURT: Thank you.

MR. LEPORE: Good afternoon, Your Honor, Carmine Lepore for Mr. Cafarelli who's present.

THE COURT: Thank you very much. Well, we're here for a hearing on Docket Entry No. 60 which is the motion to dismiss the indictment. Related to that is Docket Entry 81 which is the motion for discovery. The mot, I'm sorry.

MR. KELLY: Your Honor, I'm, I'm Paul Kelly. I represent the Mass AFL-CIO. We're here as amicus.

THE COURT: Did I not deny that motion?

MR. KELLY: I think you allowed that one, Your Honor.

THE COURT: I guess so. I guess so.

UNIDENTIFIED: You're welcome.

THE COURT: Always nice to see you, Mr. Kelly.

MR. KELLY: Nice to see you too.

THE COURT: Docket Entry 81 motion for discovery is denied.

So I'll hear you Mr. Goldstein, are you going to argue on behalf of all defendants?

MR. GOLDSTEIN: I will, Your Honor. So, there,

there's been plenty of writing in terms of addressing the issue so I kind of want to boil the issue down to what I think at its most elemental root which is the following, Your Honor. The, the motion to dismiss should be allowed because the government indicted these defendants with a misunderstanding of what the pertinent legal principles are both under the Hobbs Act and under the National Labor Relations Act or the applicable labor law. So let me start with the Hobbs Act.

The government, the indictment in this case charges that the defendants engaged in wrongful conduct in the form of wages for unnecessary, unneeded, superfluous services and, and the argument back and forth between the defense and the government boils down to what's the proper definition of that language which of course comes from the *Enman's* case and prior to that comes from the *Green* decision. The government, I contend, Your Honor, indicted this case with the following understanding, and that is that unneeded or unnecessary refers to the worker as opposed to the particular services, meaning the government's construction of the Hobbs Act is that when the union comes to persuade an employer to sign a collective bargaining agreement, if that work, if that company has already hired a particular nonunion worker, then by that fact alone, the union worker becomes

unneeded, unwanted and superfluous under *Enman's*, and that's a misreading of both *Enman's* and *Green* and all of the law that follows. What it has to be, Your Honor, is that the services offered is unneeded or unwanted. Meaning from the *Green* case, the Swampers, who the company at issue in *Green* had never used the service of a Swamper and therefore the Court said that those services were unneeded and unwanted, or in the *Robolatto* case, the cover drivers, again, unneeded and unwanted. Here, Your Honor, the government concedes, and they have to because if you take a look in the indictment drivers were a needed service for the production company identified in the indictment. If you, if you examine the indictment, Your Honor, it charges in paragraph one, that the International Brotherhood of Teamsters Local 25 was a labor organization representing 11,000 employees and among other things the transportation movie and moving in trade sh, trade shows. Paragraph two, the primary purpose of Local 25 was to negotiate and administer collective bargaining agreements. Paragraph five, Company A was not a signatory to collective bargaining agreement. They hired its own employees including drivers. Paragraph six, in the middle of paragraph six the producer explained that all of the drivers had been hired.

A union members and union officers don't engage

in a Hobbs Act extortion when they go to a company to try to persuade that company to replace nonunion worker with a union worker when they are genuine services desired by the company. Here the genuine service was drivers, and that's what the defendants are charged with trying to push a collective bargaining agreement so that the company would hire drivers. It can't be that the company, that it's a Hobbs Act extortion, simply because they've already hired drivers. That's not what *Enman's* or the cases that follow *Enman's* say, and so what we have is, we file our motion to dismiss and the government come back, comes back and says well look, it is unneeded and unwanted because the company had already hired all of its drivers, and so then in our reply pleading we say that's not what *Enman's* says. That's not how you properly read *Enman's* and so the government in its sur-reply then shifts theories, and so before I get to the sur-reply, I want to get back to the government's misunderstanding both of the Hobbs Act and related labor law principles. In, in reply to our motion to dismiss, the government comes back with two basic principles. One is the one I just addressed, that the workers were unneeded as opposed to the services, and then two, the government relies on the *A. Terzi* case. Now Justice Sotomayor's decision where she talks about collective bargaining agreements, and that in that case

which wasn't a case addressing the language used in this indictment meaning that was not a case of unneeded unwanted workers. What Justice Sotomayor was addressing in that case was, was labor law, and so what the government says in their opposition to our motion to dismiss is, well in *A. Terzi*, the, the court addressed this labor law issue and in this case, our case, the defendants had no right to engage in a collective bargaining discussion with Company A because they didn't represent a majority of the employees of the production company, and this is the second of the government's profound misunderstanding of relevant law, and we point that out in our, in our, in our reply, Your Honor, is that the way that this industry is set up, Local 25 does not need to secure the, the majority backing of employees of production Company A. That's not how it works. How it works is there is there is a, there is a specific collective bargaining agreement applicable to this industry whereby the people who come in, it's an ad hoc basis, companies come in and they become members or signatories to a collective bargaining agreement, and then pursuant to that particular collective bargaining agreement, Local 25 supplies union officials, and so I have for the Court's consideration a copy of the collective bargaining agreement so the Court can see

exactly what is at issue in this particular case. And so let me back up because--

THE COURT: And have you provided that to your sister?

MR. GOLDSTEIN: They have a copy of it, Your Honor. It, it, let me back up so I can get to, the, the facts are important here and the context is important here. What we have in this case, Your Honor, is the, the classic *Enman's* factual scenario. We have a union at its highest levels negotiating a collective bargaining agreement with Company A. That is according to the government itself, on June 9th, the night before the picketing, the president of Local 25, Sean O'Brien and my client, Mr. Harrington, Secretary Treasurer, are on a telephone call with the person responsible for Company A in the state of Massachusetts. This is in the indictment. It's in the government's pleadings and they're discussing Local 25's desire for Company A to enter into the collective bargaining agreement. As a result of that conversation, that night, Mr. O'Brien, president of Local 25 sends an email to the person heading Company A in Massachusetts and says, as per our conversation see attached, and what's attached and what I have for the Court's consideration is the collective bargaining agreement that Local 25 was hoping that Company A would

execute and so, Your Honor--

THE COURT: Well if you want me to consider it, I mean, it should be attached and made part of the record.

MR. GOLDSTEIN: And I have a copy for the Court.

THE COURT: All right, and you will do that electronically?

MR. GOLDSTEIN: I will, Your Honor, and so June 9th, at 5:16 p.m., Mr. O'Brien sends an email to the head of Company A and attaches the collective bargaining agreement. So, that's the context on the night before the picketing event, and so you have at the highest levels a, a, a dispute between the labor and the, and the management. You have Local 25 at its highest level trying to get this company to sign a collective bargaining agreement. The next morning according to the government both in its indictment and its pleadings, the president of Local 25 either leaves a message or has a conversation. The indictment says leaves a message I think, or it says, had a conversation. The pleadings say vice versa. They, they have it both ways. In any event, the next morning Mr. O'Brien is alleged to have left a message saying we're sending 50 guys to picket. We know that you're in Milton, and so, that's the factual context for this particular picketing. That is the classic *Enman's* paradigm. That is a labor official at its highest levels trying to persuade

a company to enter into a collective bargaining agreement. This is not *Green*. This is not a company trying to force or create a job that didn't exist, Swampers. This is not *Robolatto* trying to get them to hire cover drivers. This is not Local 87 with guys standing by the highway stopping trucks on the way into Manhattan and taking money for jobs that aren't performed. This is the classic *Enman's*. This is the classic pushing for the execution of a collective bargaining agreement and just because Company A doesn't want to use union labor, doesn't convert this into a federal Hobbs Act extortion. This is the exact situation that *Enman's* sort of articulated which is a labor union using means. Now let me back up in terms of the means used. There was no violence. There were no punches thrown. This is, and *Enman's*, Your Honor, they fired rifles at, at the company property and blew up a substation. That was the conduct at issue. Here we have at worst chest bumping, break, cracking knuckles and yelling some ugly language at the, at the members of Company A, but even blowing up a substation's okay as long as it's in the context of legitimate labor objectives, and the government, their argument migrates or evolves from, well okay, maybe the defendants have shown that it was in the context of a collective bargaining situation but they later argue that

it's not, it wasn't a strike and they try and limit *Enman's* to a, to the situation that involves just a strike. That's a somewhat littered throughout the government's papers, Your Honor, and *Enman's* isn't so narrow. Not even close to being as narrow. What *Enman's* says is that the word wrongful in the Hobbs Act only has meaning if it, if it describes the taking of the property, and what they repeatedly say throughout that decision is conduct aimed towards legitimate labor objectives or legitimate labor ends, and clearly here, Your Honor, trying to get Company A to sign a collective bargaining agreement was a legitimate labor objective and for that reason the facts of this case fall squarely within, within the four corners of *Enman's*.

And so, I know, Your Honor, has denied the discovery motion but I, I do want to address, what the government has done, Your Honor, is they've shifted theories. In their sur-reply they now have a backup. So in their opposition there's two, there's two basic principles to the governments opposition. One is the workers were unneeded, okay, and two is that Just, Justice Sotomayor's decision automatically makes the defendants' conduct in this case unlawful, and in our reply we point out, A, it's not that the, that the particular worker is unneeded, it has to be the service is unneeded and two,

the defendants in this case don't need the majority backing of Company A employees. They're not interested as Mr. Harrington frankly told the producer they're not interested in Company A. They're interested in having a couple of teamsters hired to drive the trucks which happens all the time in Massachusetts in this industry. That's how this industry works. And so what the government does in their sur-reply is they, they migrate to a new theory. One is they argue for the first time that the defendants always understood no services would be performed. That is not the theory charged in the indictment. That doesn't appear anywhere in the indictment. That doesn't appear anywhere in the government's principal opposition to the motion to dismiss. And then two, they, they come, and then they start arguing that well okay if it is services as opposed to workers well our, our backup position is that the defendants not only understood that no services would be performed but they, these guys were only drivers and so the company had already hired production assistants, and production assistants do driving and other chores, and so now we've weaved some narrative for the Court to deny the defendants' motions. And I respectfully submit Your Honor, that the government can't post grand jury, change its factual or legal theories, and that was the basis of

our discovery motion. Meaning, if you carefully read their opposition and then carefully read our reply and their sur-reply, they're changing their theory, and so I would respectfully ask the Court to think again about the disc--

THE COURT: No, I reviewed the discovery motion carefully, and I determined that what you are seeking at this time is inappropriate.

MR. GOLDSTEIN: Well, I'm not looking for, I'm not challenging the evidentiary sufficiency before the grand jury, Your Honor. If not, that's not the reason for the discovery motion. All I'm saying is if the government wants to rely on these new theories that are articulated in their sur-reply, then they have to have presented evidence before the grand jury about that theory. I'm not attacking the sufficiency of the evidence. I'm just--

THE COURT: I understand--

MR. GOLDSTEIN: Okay.

THE COURT: --but my ruling stands.

MR. GOLDSTEIN: All right, so I don't know if the Court has questions for me in terms of the *Enman's* issue but I, I do want to make sure that it, it's--

THE COURT: You've clearly framed it.

MR. GOLDSTEIN: Okay. Thank you, Your Honor.

THE COURT: Mr. Kelly, do you want to weigh in

at this time or do you want to hear from the government?

MR. KELLY: I'd be happy to speak now, Your Honor--

THE COURT: All right.

MR. KELLY: --if it please the Court. I have just three observations to make if I can and the first one is that this indictment is, is actually breathtaking in its scope. What was going on in this particular day was a protest over substandard wages. It happens all the time. Anybody, any member of the 700 local unions who are parties, who are affiliates of the AFL-CIO, might have been on that picket line. Based on the, this indictment, if they were on that picket line, they would be subject to a 20-year felony charge, and, and this is not, this is not extortion like *Robolatto*, $50,000 they got paid for covered drivers. This isn't that. This is conspiracy to extort, and the theory, this theory of superfluous services I could be on that picket line. I could have no idea that somebody said something that the government is now going to, so it, it is really quite draconian, Your Honor, in terms of, in terms of the very limited scope of what has been alleged.

Second observation I would like to make is with respect to, with respect to federal preemption. By, by 1959 the labor laws were pretty much in place. The

National Labor Relations Act contains, is made up of the Wagner Act. That's the section seven rights we've protected in our concerted activity and the Taft-Hartley Act 1947 was all these unfair labor practices. That's pretty much, it was pretty much in place and there was a, a case came before the Supreme Court, *San Diego Building Trades v. Garmin* in which certain picketing activity was challenged in the California courts and California determined that the picketing was a tort. It violated state tort law and awarded damages. Supreme Court in the United States rev, reviewed that and threw the damage award out and they said this, when, when an activity is arguably subject to section seven, protected activities, or section eight, prohibited activities, the states as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with federal policies be avoided. So as far as *Garmin* preemption is concerned, both arguably protected conduct and arguably prohibited conduct is preempted. Now, and there's plenty of *Garmin* case. We know however, that we're not dealing with state law and federal law here. We're talking about two federal laws. So, we go back to then Judge Sotomayor down in, down in New York City someplace, maybe Brooklyn. I'm not sure. The question came before her in the civil RICO

whether *Garmin* preemption applies to this extortionate conduct which was alleged to have been a RICO predicate act. She said, Second Circuit says no, and she actually admonished the lawyers because they didn't tell her that there was a split in the circuits, and she says, the First Circuit says it does. That's *Tamborello*, Your Honor.

THE COURT: Oh, I know the case.

MR. KELLY: Yeah, and, and *Tamborello* was a, was a question of deprivation of property by force and so on and so forth and the, and the court said well, if the only illegality here is a labor law illegality, then that's not Hobbs, Hobbs Act material. And so in my view, and, and I get it, this is not a civil RICO case, it's a federal prosecution, but if the First Circuit wants to change the scope of *Garmin* preemption, they ought to do it. I think as far as we're concerned, Your Honor, the, this, this is, is a, is preempted by, by the National Labor Relations Act. The, the, the preemption analysis is both arguably protected and arguably prohibited. One of the, one of the debates, one of the big debates that Congress had, and there's a Supreme Court case on this one too, is whether what they call top down picketing. Top down picketing is recognitional picketing. We're going to put up a picket line against a nonunion employer because we want to force that employer to recognize our union. There was a debate

as to whether the National Labor Relations Act prohibited that kind of conduct or not and it was, it was debated in Congress. It actually was in 1959 that Congress passed 8(b)7 of the Act which says recognitional prohi, picketing is limited to certain circumstances and one of them is no longer than 30 days. This particular incident which probably falls under recognitional picketing given to what I've, what I've heard of the facts behind it was three hours. The *Robolatto* case, the *Moulder (ph)* case that these, that the government cites, Your Honor, these were multiyear challenges where, where the, the employers were being coerced to do, to recognize the, the plaintiffs. This was three hours. And so, so I guess my point is--

THE COURT: Two minutes, Mr. Kelly.

MR. KELLY: Sorry. It is arguably protected activity because if you read 8(b)7 for the first 30 days, your, your conduct is protected. All right, and the last point, Your Honor, the third observation is with respect to the Hobbs Act. Violence does not make out a Hobbs Act violation. As my brother said earlier it is, if, if there is violence in connection with legitimate labor objectives, it's not unlawful under the Hobbs Act. It may be unlawful under state law and on that point, Your Honor, picket lines are always attended or very often attended by

police details. They sit there. They tell them, they tell them if you're getting too close to the, to the people who are trying to get through the line, get out of the way. They issue citations. It is the way picket lines have been, have been regulated, Your Honor, is listen to the cops. Do what they tell you. You can get pinched if you don't. So what we have here is we have the federal government second guessing the, who was it the Milton police? You know, but there was a police detail. They hired them, and nothing, nothing violent happened, Your Honor. We've covered the--

THE COURT: You've covered your three points.

MR. KELLY: The final, the final point though, Your Honor, even if you don't like, even if you don't like the federal preemption, the Hobbs Act, and this is interesting because, because the government says well the Hobbs Act was after 1946 and that was before the Unfair Labor Practice in 1947. It's actually not so. The Hobbs Act when it was originally passed, it contained this extortion definition. The president wouldn't sign it and then it went back to Congress in 1948--

THE COURT: Okay.

MR. KELLY: --after the Taft-Hartley Act.

THE COURT: We don't need the history.

MR. KELLY: All right.

THE COURT: We like it but--

MR. KELLY: All right, but, but--

THE COURT: --at four o'clock we don't need the history.

MR. KELLY: My point is that Section C of 1951 says nothing in the Hobbs Act shall modify or effect the labor protective provisions of the Clayton Act, the Norris LaGuardia Act which says that the police are in charge of the picketing and the National Labor Relations Act. So I say the Hobbs Act itself contains the preemptive effect of Federal Labor law.

Thank you, Your Honor.

THE COURT: All right, thank you, Mr. Kelly. Well Ms. Kaplan, are you going to argue?

MS. KAPLAN: I would like to, Your Honor.

THE COURT: All right. Why shouldn't I allow your brother's motion?

MS. KAPLAN: Okay. Your Honor, to begin with and just as a general matter, the gra, grand jury proceedings have a presumption of validity and regularity. The defendants have failed to allege that much less show that there's any evidence of any irregularity that occurred and influenced the grand jury's decision to indict. It's the government's position that this motion is nothing more than the defendant seeking a ruling on

sufficiency of the evidence prior to trial and, Your Honor, after spending more weeks than probably--

THE COURT: Well address Mr. Goldstein's points.

MS. KAPLAN: I'm going to Your Honor. The issues that the defendants raise as I sit here today and in their briefs are questions of fact for a jury to decide. Whether the work that was demanded by the defendants was for additional labor or whether it was for replacement labor as the defendants now say is a question of fact that a jury should be permitted to decide. The government is going to argue that the defendants did not seek a contract. Now Mr. Goldstein submits the collective bargaining agreement to you, Your Honor. He got it from the government. That collective bargaining agreement is for the movie industry. It's not for reality television shows and the witnesses from the production company will testify that they've never signed one of those agreements. They had no intention to sign that agreement. In addition, Your Honor, there was supposed to be a meeting the following Tuesday to discuss coming to possible terms with the Teamsters. The defendants cancelled that meeting, Your Honor. When Mr. Harrington shows up and talks to the production assistants, what he says on the scene is, I'm not as Mr. Goldstein says, I'm not interested in Company A. I'm not interested in this

production company. I want to get a few guys on this job. So by their own admission, they're not looking for collective bargaining agreement. They're not looking for a contract. They're looking to put a few additional laborers to work, and that's when this becomes an illegitimate labor objective. Whether there was a lawful negotiation or not for work, again, Your Honor, that is a question of fact for a jury. Whether there was something other than picketing going on such as actual violence and property damage and threats of economic harm as the government alleges is a question of fact for the jury to decide. They'll be 10 or more witnesses who will come into the courtroom and will testify about violence. I've heard them. They've testified in the grand jury. So to say this case is not about violence is just not, not, not so. I could go on, Your Honor, but these again are issues that the government is entitled to present to a jury to decide and there's nothing deficient about this indictment. Now putting, putting that aside and turning to the defendants' legal argument, it too is without merit. Simply put, the defendants argue that the Supreme Court's decision in *Enman's* applies and exempts the defendants' extortionate behavior and their conduct at Steel and Rye in Milton in June of 2014, the government disagrees. The clear holding in *Enman's* applies only to a

legitimate strike situation where the union has a lawful platform on which to seek higher wages. In the *Enman's* case, there was a collective bargaining agreement. There was a contract between the union and the employer. The union had a right then, they had a platform to ask for higher wages. In this case, Local 25 had no platform on which to seek anything from the production company. The productions employees had not recognized Local 25 as their bargaining agent. They hadn't indicated any desire to become members of the union. There was no collective bargaining agreement. There was no project labor agreement. There was no state, federal, city law of any type that required the production company to use union labor. The victim in this case, the production company was legally entitled to hire whomever it wanted to as production assistants to drive their trucks, and they did that, and they entered into a contract with the production assistants to drive their trucks. So they had a contractual relationship with their own employees who were nonunion employees when these defendants appeared on this worksite demanding work that others already had, work that was genuine. There's no question about that that needed to be done but it was unnecessary, unwanted and superfluous because others had already been hired and were in fact contractually obligated to perform that work.

What *Enman's* held was that if the union pursues agreements with new employers through tactics of violence, threats and intimidation, it does not have a lawful platform on which to claim the property of the employer and the use of such tactics is wrongful under the Hobbs Act. And that's what happened here, Your Honor. These defendants even before they got down to Steel and Rye on June 10th, showed up at various locations where the production was shooting or staging and threatened to harm the production. They used their political connections with the City of Boston so that calls were made by city officials to those employers who had already agreed to permit filming throughout Boston and they did this to ensure that these locations would refuse filming to go forward. Threats were made by those City Hall officials to withdraw the previously issued permits, and that is the reason that the production company wound up on short notice at a restaurant in Milton. Their permits had already been issued by the City of Boston. They had already been approved and the production was ready the next day to film but because of the defendants' actions, those locations where the production was supposed to film, cancelled the filming. Once in Milton, again contrary to what the defendants say, and again, indicative of the fact that this a question of fact for a jury, the defendants

used actual force and violence and threats and destruction to property to demand jobs that were already contracted for. Now there is no question that these defendants could have driven the trucks, but the production assistants that were hired were hired not only to drive the trucks, but they were hired to perform other duties, duties that these defendants could not and would not perform and they weren't, they weren't trained in, they weren't able to--

THE COURT: Such as?

MS. KAPLAN: --such as setting up the stage, moving the equipment. So this would have, they would have been additional--

THE COURT: Moving the equipment, does that take a lot of training?

MS. KAPLAN: Well the, well probably not, Your Honor, but lighting. I mean people go to school for this type of thing. Not, not only that, Your Honor, it's not within their jurisdiction. They wouldn't do that type of work. So had they been hired they would have been driving. They would have been replacing the driver, but they would have also been additional labor because they couldn't perform the work that the drivers, the production assistants were also doing. So that means that the production would have had to have hired these defendants

as additional labor, labor that the production company did not need or want just as the government pled in the indictment. The cases following *Enman* support the argument that without a lawful platform the demands that these defendants made of the production company were in violation of the Hobbs Act, and in *A. Terzi* production then District Court Judge Sotomayor concluded that the *Enman's* claim of rights defense did not apply. It simply doesn't apply where the union is not authorized to represent any of the employer's employees, and she went on to say that it's a basic tenant of federal labor law that a union has a right to demand that an employer recognize or bargain collectively with the union unless does not have that right, has no right to demand that unless it's first obtained the majority backing of that employer's employees and been certifies, certified as their bargaining representative. While *Enman's* might apply to violence instead of to the recognition of bargaining demands of a properly authorized union because in that instance the employer has a legal duty to recognize and bargain with the union--

THE COURT: Just one second. I'm sorry. I have a little emergency criminal business, but--

MS. KAPLAN: Okay.

THE COURT: Proceed.

MS. KAPLAN: So she went on to say that forcing a collective bargaining agreement upon unwilling employees and their employer is wrongful within the Hobbs Acts meaning. The union is an outside meddler with no lawful claim to the employer's property. And that's the case that we have here, Your Honor. The government is going to prove at trial that the defendants had no lawful platform to make their demands and, Your Honor, even if the Court were to find after hearing the evidence at trial that there's some evidence that the defendants had such a lawful platform, the Court can provide adequate jury instructions pursuant to the *Enman's* case and it will be left for a jury to decide whether their conduct falls within or outside the protection of *Enman's*?

With respect to the amicus brief, Your Honor, I certainly understand the concerns of the AFL-CIO that somehow this indictment is an attempt by the government to wrongly seek to limit a union's right to picket. That is not what the government is doing here. The unions recog, the government recognizes that the unions have a right to picket and the government here has charged that the wrongfulness and the defendants' actions was, was threatening to picket but more than that it was their actual conduct down in Milton. This is not a case about substandard wages as counsel's, the amicus brief says.

This is the first time even hearing about that. These were not defendants who were holding signs, talking to, to inform the public that the production company was paying substandard wages, and again, if that's what it is, if it's a question of fact for the jury to decide, but that's the first that the government's hearing about this. In fact, the evidence is going to show that this picketing that these activities down in Milton were not authorized by the union itself. That is what the evidence is going to show. This case is much more than just about picketing. It's about the defendant's use of physical harm, property damage and threats of physical and economic harm, to demand wages for work that is unnecessary, unwanted and superfluous and that's why it's a violation of the Hobbs Act. The issue of preemption as argued in the amicus brief doesn't apply here. The case law is clear, that there's no preemption until *Garmin* where the court does not have to decide any issues under the NLRA. The NLRA is not a part of this indictment or part of this case, and there'll be no determination necessary for the Court to make under the NLRA. For these reasons the relief sought by the amicus brief, that the indictment be dismissed as the NLRA preempts the Hobbs Act should be denied.

With respect to the defendants other arguments

as to void for vagueness of the mens rea argument, the government will rest on its brief unless you have--

THE COURT: No, that's all right.

MS. KAPLAN: --any specific questions.

THE COURT: Briefly, I'll give you two minutes, Mr. Goldstein.

MR. GOLDSTEIN: Thank you, Your Honor. Your Honor, I have to respond to a couple of points. First, first of all, just because the government has secured an indictment doesn't mean we necessarily push this case to a trial. *Enman's* itself, Your Honor, was a motion to dismiss that was allowed by the district court, ultimately affirmed by the Supreme Court. What we just heard is the exact profound misconception of law applicable to this case, misconception with all due respect by the government. Ms. Kaplan just told you that the, the services were "superfluous" because others had already been hired. That's the government's articulation of its theory of the Hobbs Act. That is completely contrary to *Enman's*. It's not superfluous because others have been hired. It's supler, superfluous if and only if the work, the services are not needed. The Swampers in *Green*, cover drivers. That's not this case. And so for present purposes, Your Honor, we will concede, although we don't agree, you can conceive for present purposes that there

were threats and there were violence. This is the Supreme Court's language fron, from, from *Enman's*, Your Honor, at page 400. The lit, "The literal language of the statute will not bear the government's semantic argument that the Hobbs Act reaches the use of violence to achieve legitimate union objectives." *Enman's* is not limited to the strike contacts as Ms. Kaplan just argued to Your Honor. Littered throughout *Enman's* are references to legitimate union objectives with legitimate union ends, and here, Your Honor, so the government, two, two arguments. One is superfluous cause people are already hired. That's not what the law is under *Enman's*. Two is the defendants didn't have what Ms. Kaplan referred to as a lawful platform to even enter into negotiations. That too is incorrect, Your Honor. I'm going to hand up for the Court's consideration, the actual collective bargaining agreement with the email both of which the government has, the email from Mr. O'Brien to Ellie Carbohaul (ph) at 5:16 p.m., and if you look at the actual language of the collective bargaining agreement, Your Honor, first of all, "This collective bargaining agreement is entered into this first day of August, 2013 by and between New England Motion Picture and Television Production Producers Association." So Ms. Kaplan's argument that this contract doesn't apply to the

television industry it is contradicted by black letters on white paper. This is the collective bargaining agreement. What it says is that "Article 1 recognition, based on a review of recognition cards executed by a majority of drivers traditionally employed in the motion picture and television production industry, theatrical and entertainment industries in the geographical areas covered by this agreement (which is New England) and the association, meaning the Motion Picture Television Production Producers Association, hereby recognizes the union as the exclusive collective bargaining representative of all transportation, coordinators and captains specialized equipment drivers, mechanics, Chauffeur, chauffeurs, helpers, DOT Compliance Officers employed in connection with the production of motion picture and television production industry." And then when you go to the last page of the collective bargaining agreement, what they ask for is any company that comes into Massachusetts, that they sign this collective bargaining agreement, "By executing the acceptance of this agreement, the below named production company agrees to become part of the New England Motion Picture and Television Production Producers Association and to accept the terms of the agreement." Meaning this is a specialized area. Companies come into Massachusetts.

They shoot film. They shoot television commercials. It's not some other disparate industry, and so what happens here is they have a unique contract like the construction industry discussed in the *Kirsh* (ph) case, Your Honor, and what happens is when these companies come into Massachusetts, local 25 negotiates with the companies. They become a member, a party to this collective bargaining agreement. Yes, the teamsters have no interest in production in Company A. That's not their interest. What their interest is Company A becoming a party to this particular collective bargaining agreement signing the acceptance of the terms and then hiring one or two or more union members, and so we just heard it from Ms. Kaplan. This case was indicted on an improper view of law that superfluous means they have to, that it's, it's, superfluous means the workers not the service and just because they already hired the worker doesn't make the union members unneeded, unwanted, unnecessary ur, or superfluous. Thank you.

THE COURT: All right, I'll take Docket Entry No. 60 under advisement.

MS. KAPLAN: Your Honor, if I may I just want to point out that this CBA wasn't even a part of, you know, the hundreds of pages of briefs and the government would have liked an opportunity to have responded to that. The,

the testimony in this case is going to be that this, that these, this production company was not a member of this association, and now they're going to put the CBA in to say here was this collective bargaining agreement? It's not and it's a question of fact for a jury to decide again.

THE COURT: All right, so noted. All right, Brendan, where are we in this case on discovery and status?

THE CLERK: (Inaudible - #4:17:07 PM).

THE COURT: Just want to see if we have another status date?

MS. KAPLAN: I think we have another date.

THE COURT: Well I just want to be sure.

THE CLERK: I think at the last status we set it up for the motions.

THE COURT: And the last status was what date?

THE CLERK: On 3/2 instead of for today.

THE COURT: All right, and we excluded the time through today.

MR. GOLDSTEIN: I think I have March 2nd, Your Honor as a--

THE COURT: We, yeah, we have a, there's a court note--

MR. GOLDSTEIN: Okay. All right.

THE COURT: --from March 2nd.

MR. GOLDSTEIN: Yup.

THE COURT: So let's--

MR. GOLDSTEIN: Yes.

THE COURT: Let's talk about discovery at this point. Where are we?

MS. KAPLAN: The government's completed discovery.

THE COURT: All right. How much time do defendants need?

MR. BARRON: I, I've written a discovery letter, Your Honor, and the government has responded. We're not in agreement over release of exculpatory information. The government has made it's--

THE COURT: Does that surprise me, Mr. Barron?

MR. BARRON: It shouldn't, Your Honor. That's the way things go I guess. So I, I think a motion will be necessary. I, in order to, to keep the filings to a minimum, I'm consulting with my brothers and we're--

THE COURT: All right.

MR. BARRON: --we're going to put together a motion.

THE COURT: So what, another status conference maybe in 30 days? And you will have your discovery. You'll pretty much know whether or not you're going to

need further discovery letters the other defendants. All right, can we have a date Brendon?

THE CLERK: How about April 26th at 2:30?

MR. BARRON: 26th.

MR. GOLDSTEIN: I'm actually, I'm out of, I'm out of, I'm away on business that particular week, Your Honor.

THE CLERK: Want to do May 3rd at 2:30??

MR. BARRON: That's fine.

MR. GOLDSTEIN: That's fine.

THE COURT: All right, on behalf of all five defendants do you agree, counsel, to exclude the time from today until the third of May for the purposes of speedy trial?

COUNSEL: Yes, Your Honor.

THE COURT: All right, hearing all affirmatives, I will ask the government to file a motion promptly.

MS. KAPLAN: We will, Your Honor.

THE COURT: All right. Any other matters you with to bring to my attention at this time?

MS. KAPLAN: No, Your Honor.

THE COURT: All right we stand in--

MR. BARRON: Is two o'clock--

MR. GOLDSTEIN: 2:30.

THE CLERK: 2:30.

THE COURT: 2:30. That's Brendan's favorite time.

MS. KAPLAN: Thank you.

THE COURT: All right we stand in recess.

(Court adjourned)

(4:19:28 PM)

CERTIFICATION

I, Maryann V. Young, court approved transcriber, certify that the foregoing is a correct transcript from the official digital sound recording of the proceedings in the above-entitled matter.

/s/ Maryann V. Young April 1, 2016